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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

Telephone Number:

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PLR-161328-05

Date:

September 15, 2006

In Re:

Legend:

Date 1 =

Grantor =

Trust 1 =

Trust 2 =

Child 1 =

Child 2 =

Individual =

1

Individual =

2

Individual =

3

Individual =

4

Individual =

5

Date 3 =

Child 3 =

Date 4 =

Trustee 1 =

Trustee 2 =

Trust 3 =

Dear :

This is in response to your authorized representative's letter dated November 30, 2005, requesting rulings on the gift, estate, and generation-skipping transfer (GST) tax consequences of the partition of trusts that are exempt from the application of the GST tax under § 2601 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: On Date 1, Grantor established Trust 1 and Trust 2, irrevocable trusts. Trust 1 was established for the benefit of Child 1 and Child 1's descendants. Trust 2 was established for the benefit of Child 2 and Child 2's descendants. The dispositive provisions of Trust 1 and Trust 2 are identical, with the exception of the identity of the beneficiaries. Grantor allocated a portion of his GST exemption to Trust 1 and Trust 2 in an amount equal to the value of property transferred to Trust 1 and Trust 2, effective as of Date 1. Thus, Trust 1 and Trust 2 each have inclusion ratios of zero.

Article First, paragraph (A)(1) of Trust 1 provides that the trustee shall pay all or so much of the net income and all or so much of the principal to one or more of the beneficiary and the descendants of the beneficiary living from time to time as the trustee in her sole and absolute discretion shall deem necessary to provide for the health, maintenance, support or education of such persons.

Article First, paragraph (A)(2) of Trust 1 provides that after the beneficiary attains the age of thirty years, the trustee shall be authorized to distribute to the beneficiary so much of the principal as the trustee in her sole and absolute discretion deems advisable for the purchase of a home or establishment of or investment in a business by such beneficiary.

Article First, paragraph (A)(3) of Trust 1 provides that upon the death of the beneficiary, if his trust shall not have sooner terminated by complete distribution of all of the principal and income pursuant to subparagraphs (1) and (2), the trustee shall divide the beneficiary's trust as it shall then exist into shares for the then living issue of the beneficiary, per stirpes, or if none, for the then living issue of Grantor, per stirpes. If no descendants of the beneficiary or Grantor are then living, the trustee shall divide the beneficiary's trust into separate equal shares so as to provide one equal share for each of the then living children of Individual 1, Individual 2, and Individual 3, and one equal share for the then living issue collectively of the children who are then deceased leaving issue then living. The trustee shall further subdivide each share provided for the then living issue collectively of each of the children who are then deceased into subshares for such issue, per stirpes. If no issue of Grantor, the beneficiary, Individual 1, Individual 2 or Individual 3 are living, then upon the beneficiary's death the trustee shall divide the beneficiary's trust into separate equal shares so as to provide one equal share for each of the then living grandchildren of Individual 4 and Individual 5, and one equal share for the then living issue collectively of each deceased grandchild of Individual 4 and Individual 5 who leaves issue then living, and the trustee shall further subdivide the share provided for any deceased grandchild into subshares for his or her

then living issue, per stirpes; provided that for the purposes of the partition and distribution Grantor shall be treated as then deceased. Each share and subshare so provided under subparagraph (3) shall be held in further separate trust for the person for whom the same is provided (the "beneficiary" of the trust) in accordance with the provisions of subparagraphs (1), (2) and (3) of paragraph (A).

Article First, paragraph (B) provides that if upon termination of any trust under Article First, there is no one living to whom any principal or income may be distributed, the trustee shall pay over the balance of the trust estate as it shall then exist to the then living children of Individual 4 and Individual 5, in equal shares, provided that any child who has at any time made a contribution of property to this trust shall be treated as then deceased.

Article First, paragraph (D) provides that if any child is born to or adopted by Grantor subsequent to the date of this agreement, the trustee shall set aside out of the property then held hereunder a separate trust (the "new trust") for such child as follows: (1) The new trust shall be funded with property having a value equal to the value of an equal share of all principal and accumulated and accrued income then held hereunder if the same were divided into separate equal shares so as to provide one equal share for each then living child of Grantor and one share for each then deceased child of Grantor leaving issue then living. (2) Each separate share then held shall contribute to the new trust that percentage of the value of the new trust (determined in accordance with subparagraph (1)) as is equal to the ratio of the value of the separate share (including all accumulated and accrued income) to the entire value of the property (including all accumulated and accrued income) held under Trust 1. (3) The new trust provided for a child of Grantor born or adopted after the date of the trust agreement shall be held in further separate trust for the child (the "beneficiary" of the trust) in accordance with the provisions of Trust 1.

Article First, paragraph (E) provides that any trust under Article First not previously terminated shall terminate twenty-one years after the death of the last survivor of the issue of Individual 4 and Individual 5, or upon the earlier death of all of the issue of the children of Individual 4 and Individual 5, whether or not in being on the date hereof. Upon such termination, the trustee shall pay over the principal of each trust, as it shall then exist, to the person or persons entitled to the income and in the same shares and proportions.

Article Sixth provides, in part, that no person who is also beneficially interested in any trust created under Trust 1 and no person who is a "related or subordinate party" (as defined in § 672(c)) to any person who contributed property to any trust created under Trust 1 shall become a trustee.

On Date 3, Child 3, Grantor's third child, was born.

On Date 4, Trustee 1, as trustee of Trust 1, and Trustee 2, as trustee of Trust 2, executed declarations of partition of trust for Trust 1 and Trust 2 and pursuant to Article First, paragraph D of the trusts, a separate trust, Trust 3, was established. Trust 3 was funded with property having a value equal to the value of an equal share of all principal and accumulated and accrued income then held for each then living child of Grantor. Trust 1 and Trust 2 were each divided and severed on a fractional basis and Trust 3 received a pro rata portion of each asset held in Trust 1 and Trust 2. The trustees of each of Trust 1 and Trust 2 distributed one-third of the assets of each trust held on Date 3, to the trustee of Trust 3 in trust for the benefit of Child 3. Trustee 1 was appointed trustee of Trust 3. There have been no additional separate trusts established after Trust 3.

The following rulings have been requested:

- (1) The partition of Trust 1 and Trust 2 to create Trust 3 will not affect the allocation of GST exemption to Trust 1 and Trust 2, and Trust 3 will have an inclusion ratio of zero so that distributions from Trust 3 will not be subject to GST tax under § 2601;
- (2) The partition of Trust 1 and Trust 2 will not cause any beneficiary to have made a taxable gift for purposes of § 2501;
- (3) The partition of Trust 1 and Trust 2 will not cause Trust 3 or its transferor trusts, Trust 1 and Trust 2, to be included in the gross estate of any beneficiary under §§ 2033, 2036, 2037, and 2038;
- (4) Trust 3 will be treated as a separate taxpayer under § 643(f); and
- (5) Trust 1, Trust 2, and Trust 3 are “qualified trusts” so that the transfer of assets to Trust 3 will not constitute an accumulation distribution under § 665.

Ruling Request 1:

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2642(a)(3)(A) provides that if a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of chapter 13.

Section 2642(a)(3)(B) provides that the term “qualified severance” means the partition of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if: (1) the single trust was divided on a fractional basis, and (2) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

Section 2642(a)(3)(C) provides that a severance pursuant to § 2642(a)(3) may be made at any time.

In this case, as a result of Grantor's allocation of GST exemption to Trust 1 and Trust 2, Trust 1 and Trust 2 each have inclusion ratios of zero. Further, the provisions of Trust 1 and Trust 2 require the trustees of the trusts to establish separate trusts upon the birth or adoption of a child by Grantor subsequent to the dates Trust 1 and Trust 2 were established. Accordingly, the Date 4 partition of Trust 1 and Trust 2 to create Trust 3 does not affect Grantor's prior allocation of GST exemption to Trust 1 and Trust 2. In addition, the partition of Trust 1 and Trust 2 was made on a fractional basis and the terms of Trust 3 are identical to those of Trust 1 and Trust 2, with the exception of the identity of the beneficiaries, and provide for the same succession of interests. Accordingly, the partition of Trust 1 and Trust 2 are qualified severances within the meaning of § 2642(a)(3) and Trust 1, Trust 2, and Trust 3 will be treated as separate trusts for purposes of chapter 13. The qualified severance of Trust 1 and Trust 2 does not affect Grantor's allocation of GST exemption to those trusts. Thus, distributions from Trust 3 will likewise not be subject to GST tax under § 2601.

Ruling Request 2:

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual.

Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides, in part, that any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

In this case, the provisions of Trust 1 and Trust 2 require the trustees of the trusts to establish separate trusts upon the birth or adoption of a child by Grantor subsequent to the dates Trust 1 and Trust 2 were established. After the partition of Trust 1 and Trust 2 to create Trust 3, each beneficiary will have substantially the same beneficial interest as he or she had under Trust 1 and Trust 2 prior to the partition. Because the beneficial interests of the beneficiaries are substantially the same both before and after the proposed partition and because the terms of Trust 1 and Trust 2 require the creation of a separate trust upon the birth of Child 3, no transfer of property will be deemed to occur as a result of the partition. Accordingly, the partition of Trust 1 and Trust 2 to create Trust 3, and the pro rata allocation of the assets of Trust 1 and Trust 2 to Trust 3 will not result in a transfer subject to gift tax under § 2501 by any of the beneficiaries.

Ruling Request 3:

Section 2036 provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death: (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037 provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if: (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds five percent of the value of such property.

Section 2038(a)(1) provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

In order for §§ 2036-2038 to apply, the decedent must have made a transfer of property of any interest therein (except in case of a bona fide sale for adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property.

In the present case, the partition of Trust 1 and Trust 2, as required in their respective instruments, does not constitute a transfer within the meaning of §§ 2036-2038. The beneficiaries of the trusts will have the same interest after the partition as they had prior to the partition. We therefore conclude that the partition of Trust 1 and Trust 2 will not cause the interest of any beneficiary of Trust 1, Trust 2, or Trust 3 to be includible in the beneficiary's gross estate under §§ 2036-2038.

Ruling Request 4:

Section 643(f) provides that, for purposes of subchapter J, under regulations prescribed by the Secretary, two or more trusts shall be treated as one trust if (1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1.

Trust 1, Trust 2, and Trust 3 will each have a different beneficiary. Therefore, based solely on the facts and representations submitted, we conclude that Trust 1, Trust 2, and Trust 3 will be treated as separate taxpayers for federal income tax purposes.

Ruling Request 5:

Section 661(a) provides that in any taxable year a deduction is allowed in computing the taxable income of a trust (other than a trust to which subpart B applies), for the sum of (1) the amount of income for such taxable year required to be distributed currently; and (2) any other amounts properly paid or credited or required to be distributed for such taxable year.

Section 1.661(a)-2(f) provides that gain or loss is realized by the trust or estate (or the other beneficiaries) by reason of a distribution of property in kind if the distribution is in satisfaction of a right to receive a distribution of a specific dollar amount, of specific property other than that distributed, or of income as defined under § 643(b) and the applicable regulations, if income is required to be distributed currently.

Section 662 provides that there shall be included in the gross income of a beneficiary to whom an amount specified in § 661(a) is paid, credited, or required to be distributed (by an estate or trust described in § 661), the sum of the following amounts: (1) the amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not; and (2) all other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year.

Based solely on the facts and representations submitted, we conclude that the partitioning of Trust 1 and Trust 2 to create Trust 3 is not a distribution under § 661 or § 1.661(a)-2(f).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect. While this office has not verified any of the material

submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we refuse to rule on the income tax consequences of the transaction discussed in this letter.

These rulings are directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

James F. Hogan

James F. Hogan
Senior Technician Reviewer, Branch 9
(Passthroughs & Special Industries)

Enclosures:

Copy of letter for § 6110 purposes
Copy of letter